7. (Twice Amended) The maize plant, or parts thereof, according to claim 2, further comprising a gene transferred trait.

B2 8. (Twice Amended) The maize plant, or parts thereof, according to claim 2 further comprising a transgene operably linked to one or more regulatory elements.

9. (Twice Amended) The maize plant according to claim 8, wherein said transgene confers upon said maize plant tolerance to a herbicide.

B3 11. (Twice Amended) The maize plant according to claim 8, wherein said transgene confers upon said maize plant insect resistance, disease resistance or virus resistance.

12. (Twice Amended) A maize plant according to claim 11, wherein said transgene conferring upon said maize plant insect resistance is a Bacillus Thuringeiensis Cry1Ab gene.

B4 38. (Twice Amended) The method according to claim 37, wherein said one parent is the plant of inbred maize line NP2171, further comprising a transgene.

B5 40. (Twice Amended) A method comprising introgressing a gene into inbred maize line NP2171, seed of said line having been deposited under ATCC Accession No. PTA-2886, using one or more markers for marker assisted selection among maize lines to be used in a maize breeding program, the markers being associated with said gene, wherein the resulting maize line is inbred maize line NP2171 further comprising said gene.

41. (Twice Amended) The method according to claim 40, wherein said gene comprises a Cry1Ab gene.

B6 42. (Twice Amended) A NP2174 derived maize plant, or parts thereof, wherein at least one ancestor of said maize plant is the maize plant of claim 2, said maize plant expressing a combination of at least two NP2174 traits selected from the group consisting of: a relative maturity of approximately 85 to 105 days based on the Comparative Relative Maturity Rating System for harvest moisture of grain, Eyespot resistance, Common Rust resistance, First Brood Corn Borer resistance, Gray Leaf Blight resistance, anther color of 17 (Munsell Code), silk color 3 days after emergence of 26 (Munsell code), husk tightness greater than that of A619, slightly curved row alignment compared to the straight row alignment of A619, greater ear height to base of top ear node compared to A619, and adapted to the Northern Cornbelt regions of the United States.

43. (Amended) The maize plant, or parts thereof, of claim 5, wherein the plants or parts thereof have been transformed so that its genetic material contains a transgene operably linked to one or more regulatory elements.

46. (Amended) A method for producing a maize plant that contains in its genetic material a transgene, comprising crossing the maize plant of claim 45 with either a second plant of another maize line, or a non-transformed maize plant of the line NP2171, so that the genetic material of the progeny that result from the cross contains the transgene operably linked to a regulatory element.

48) (Amended) The method of claim 47, wherein the plant breeding techniques are selected from the group consisting of recurrent selection, backcrossing, pedigree breeding, restriction fragment length polymorphism enhanced selection, genetic marker enhanced selection, and transformation.

REMARKS

Claims 5, 7, 8, 9, 11, 12, 38, 40, 41, 42, 43, 46, and 48 have been amended.

Claim 45 has been cancelled.

Claim 42 remains rejected and claims 6-8, 15, 33, 34, 38, 39, and 48 stand rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the claimed subject matter. Applicant has amended claim 42 to recite more specific trait characteristics described in the specification and deposited seed.

The standard for whether a claim is definite is whether a person skilled in the art, reading the claim in light of the specification, will reasonably be apprised of the claim scope. *In re Warmerdam*, 33 F.3d 1354 (Fed. Cir. 1994). The primary purpose of the definiteness requirement in claims is to provide clear warning to others as to what constitutes infringement of the patent. *Solomon v. Kimberly-Clark Corp.* 216 F.3d 1372, 1379 (Fed. Cir. 2000) In Georgia Pacific, the 2nd Circuit, the court states that:

"patentable inventions cannot always be described in terms of exact measurements, symbols and formulae, and the applicant necessarily must use the meager tools provided by language, tools which admittedly lack exactitude and precision. If the claims, read in the light of the specifications, reasonably apprise those skilled in the art both of the utilization and scope of the invention, and if the language is as precise as the subject matter permits, the courts can demand no more." *Georgia-Pacific Corp. v. United States Plywood Corp.* 258 F.2d 124, 118 USPQ 122 (2d Cir. 1958). *cert. denied,* 358 U.s. 884 (1958).